

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AVAILINK, INC.,

Petitioner,

v.

TEXAS INSTRUMENTS, INC.,

Respondent.

Case No. [25-mc-80119-EKL](#) (PHK)

**ORDER DENYING MOTION TO  
COMPEL RE DOCUMENTS  
PURSUANT TO SUBPOENA ISSUED  
TO TEXAS INSTRUMENTS; ORDER  
GRANTING-IN-PART MOTION TO  
COMPEL RE DEPOSITION  
SUBPOENA**

Re: Dkt. 1

HDMI LICENSING ADMINISTRATOR,  
INC.,

Plaintiff,

v.

AVAILINK, INC.,

Defendant.

Related Case No. [22-cv-06947-EKL](#) (PHK)

Re: Dkt. 149

**INTRODUCTION**

This matter was transferred to this Court by Order from the United States District Court for the Northern District of Texas. *See* Dkts. 11-13. This matter is related to Case No. 22-cv-06947. [Dkt. 15]. All discovery in that underlying case and in this miscellaneous action has been referred to the undersigned.

Now pending before the Court is a dispute regarding a subpoena seeking both documents and a Rule 30(b)(6) deposition which Availink issued to third party Texas Instruments (“TI”). [Dkt. 1]. The Court heard oral argument on this dispute on June 3, 2025, at the conclusion of

which the matter was submitted. This Order memorializes the Court’s directives at the hearing and incorporates them by reference.

### **LEGAL STANDARD**

With regard to the scope of discovery in federal civil actions, Federal Rule of Civil Procedure 26(b)(1) provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Information need not be admissible to be discoverable. *Id.* Relevancy for purposes of discovery is broadly defined to encompass “any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *In re Williams-Sonoma, Inc.*, 947 F.3d 535, 539 (9th Cir. 2020) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350-51 (1978)); *see also In re Facebook, Inc. Consumer Privacy User Profile Litig.*, No. 18-md-2843 VC (JSC), 2021 WL 10282215, at \*4 (N.D. Cal. Sept. 29, 2021) (“Courts generally recognize that relevancy for purposes of discovery is broader than relevancy for purposes of trial.”) (alteration omitted).

While the scope of relevance is broad, discovery is not unlimited. *ATS Prods., Inc. v. Champion Fiberglass, Inc.*, 309 F.R.D. 527, 531 (N.D. Cal. 2015) (“Relevancy, for the purposes of discovery, is defined broadly, although it is not without ultimate and necessary boundaries.”). Information, even if relevant, must be “proportional to the needs of the case” to fall within the scope of permissible discovery. Fed. R. Civ. P. 26(b)(1). The 2015 amendments to Rule 26(b)(1) emphasize the need to impose reasonable limits on discovery through increased reliance on the common-sense concept of proportionality: “The objective is to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry. The [proportionality requirement] is intended to encourage judges to be more aggressive in identifying and discouraging discovery overuse.” Fed. R. Civ. P. 26 advisory committee’s note to 2015 amendment. In evaluating the proportionality of a discovery request, a court should consider “the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to the information, the parties’ resources, the importance of the discovery in resolving the

1 issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.”  
2 Fed. R. Civ. P. 26(b)(1).

3 The party seeking discovery bears the burden of establishing that its request satisfies the  
4 relevancy requirements under Rule 26(b)(1). *La. Pac. Corp. v. Money Mkt. 1 Inst. Inv. Dealer*,  
5 285 F.R.D. 481, 485 (N.D. Cal. 2012). The resisting party, in turn, has the burden to show that the  
6 discovery should not be allowed. *Id.* The resisting party must specifically explain the reasons  
7 why the request at issue is objectionable and may not rely on boilerplate, conclusory, or  
8 speculative arguments. *Id.*; *see also Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.  
9 1975) (“Under the liberal discovery principles of the Federal Rules defendants were required to  
10 carry a heavy burden of showing why discovery was denied.”).

11 Federal Rule of Civil Procedure 45 permits a party to serve a subpoena on a nonparty  
12 requiring, among other things, the production of “documents, electronically stored information, or  
13 tangible things in that person's possession, custody, or control.” Fed. R. Civ. P. 41(a)(1)(A)(iii).  
14 Rule 45 also permits a party to serve a subpoena on a nonparty commanding that nonparty to  
15 attend and testify at a deposition. *Id.* Under Rule 30(b)(6), a deposition subpoena directed to an  
16 organization “must describe with reasonable particularity the matters for examination.” The scope  
17 of discovery allowed under a Rule 45 subpoena is generally the same as the scope of discovery  
18 permitted under Rule 26(b). *In re Subpoena to Apple, Inc.*, No. 5:14-cv-80139-LHK, PSG, 2014  
19 WL 2798863, at \*2 (N.D. Cal. June 19, 2014); *see* Fed. R. Civ. P. 45 advisory committee's note to  
20 1970 amendment (“[T]he scope of discovery through a subpoena is the same as that applicable to  
21 Rule 34 and the other discovery rules.”); Fed. R. Civ. P. 34(a) (“A party may serve on any other  
22 party a request within the scope of Rule 26(b).”).

23 The Court has broad discretion and authority to manage discovery. *U.S. Fidelity & Guar.*  
24 *Co. v. Lee Inv. LLC*, 641 F.3d 1126, 1136 n.10 (9th Cir. 2011) (“District courts have wide latitude  
25 in controlling discovery, and their rulings will not be overturned in the absence of a clear abuse of  
26 discretion.”); *Laub v. U.S. Dep’t of Int.*, 342 F.3d 1080, 1093 (9th Cir. 2003). As part of its  
27 inherent discretion and authority, the Court has broad discretion in determining relevancy for  
28 discovery purposes. *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005)

(citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)). The Court’s discretion extends to crafting discovery orders that may expand, limit, or differ from the relief requested. *See Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (holding trial courts have “broad discretion to tailor discovery narrowly and to dictate the sequence of discovery”). For example, the Court may limit the scope of any discovery method if it determines that “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i).

### **DISCUSSION**

Availink issued the subpoena at issue to TI on March 27, 2025. [Dkt. 2-1]. The subpoena seeks the production of certain documents and a Rule 30(b)(6) deposition on certain topics, set for April 23, 2025. *Id.* The fact discovery deadline in the underlying case was April 25, 2025. [Dkt. 2-3 at 3]. TI served its objections to the subpoena on April 9, 2025. [Dkt. 2-5].

By telephone and correspondence between April 15-22, 2025, Availink and TI attempted to resolve their disputes over the subpoena. [Dkt. 1 at 15]. Unable to reach resolution, Availink filed the instant motion in the Northern District of Texas on April 23, 2025, styled as an “Emergency Motion” and seeking expedited treatment. *Id.* at 14. TI filed its opposition brief on April 24, 2025. [Dkt. 5]. Availink filed its reply later that same day. [Dkt. 7]. On May 2, 2025, the Parties filed a joint status report in the Northern District of Texas indicating their agreement to transfer this dispute to this District. [Dkt. 11]. The Northern District of Texas court issued its Order transferring this dispute to this Court on May 13, 2025. [Dkt. 12]. This matter was received and docketed in this Court on May 14, 2025. [Dkt. 13]. This matter was deemed related to the underlying action and reassigned to the presiding District Judge on May 23, 2025. [Dkt. 23]. This matter was then referred to the undersigned on May 27, 2025.

#### **A. SUBPOENA FOR DOCUMENTS**

The subpoena at issue here seeks certain agreements between TI and HDMI LA, as well as correspondence between the two entities. [Dkt. 2-1 at 7]. At the June 3, 2025 hearing, Availink admitted that HDMI LA produced sufficient documents in response to party discovery during April which cover the categories of documents sought from TI. Availink accordingly withdrew

the motion to compel production of any documents from TI. As a result, the Court **DENIES AS MOOT** Availink's motion to compel the production of documents from TI.

### **B. DEPOSITION SUBPOENA**

The remaining dispute is whether Availink's motion to compel a corporate deposition of TI should be granted. The four topics in the deposition notice attached to the subpoena are the following:

#### TOPICS FOR ORAL DEPOSITION

1. Any agreements between TI and HDMI LA from January 2021 to the present.
2. Any disputes pertaining to any agreements between TI and HDMI LA from January 2021 to the present.
3. TI's interpretation of any agreements between TI and HDMI LA.
4. The resolution of any disputes between TI and HDMI LA from January 2021 to the present.
5. Any correspondence between TI and HDMI LA from January 2021 to the present.

Dkt. 2-1 at 7.

TI lodged several objections to the deposition subpoena. First, as a procedural matter, TI objects that the subpoena is unduly burdensome because it was served too late and set the deposition at a date which made it impossible to prepare and present a witness for the noticed date. [Dkt. 2-5 at 3]. TI also argued that the motion to compel should be denied because the fact discovery cutoff has passed. [Dkt. 5 at 2-3].

These objections are **OVERRULED**. First, as to timing issues, the subpoena was served before fact discovery closed. Even if the noticed deposition date was unavailable, it is not uncommon in civil litigation for parties to agree to certain discovery to be taken after the formal deadline for fact discovery has passed, particularly to accommodate a witness's personal schedule. The fact that the Parties attempted to negotiate to resolve the dispute prior to the filing of the instant motion is also not to be faulted. And any delay in the transfer of the motion to this Court is not a sufficient reason to deny the motion. Second, at the hearing, TI admitted that the person who would likely be the Rule 30(b)(6) designee (because of their knowledge of the facts here) and who

1 is mentioned in their objections to the subpoena was no longer travelling and was generally  
2 available. TI admitted that there would be no substantial scheduling issues for a deposition,  
3 particularly if it were to be held by Zoom for the witness's convenience.

4 TI also objected that the deposition topics are not relevant and are overbroad. [Dkt. 2-5 at  
5 2-3; Dkt. 5 at 4]. As to relevance, Availink argues that the Adopter Agreement at issue in this case  
6 is a standard agreement which HDMI LA enters into with manufacturers such as Availink and TI;  
7 that TI undertook a course of conduct under the Adopter Agreement which is consistent with  
8 Availink's; that TI had a dispute with HDMI LA over that Adopter Agreement and, in that  
9 dispute, TI apparently asserted to TI an interpretation of the Adopter Agreement which is relevant  
10 to the interpretation of that agreement which Availink asserts in the underlying action; and that in  
11 the settlement agreement which resolved the dispute between TI and HDMI LA, there are terms  
12 which are relevant to Availink's contention that allegedly refute HDMI LA's contentions that the  
13 manufacturers are treated in a non-discriminatory manner. [Dkt. 1 at 12].

14 TI also objects that the deposition topics inherently seek the contents of attorney-client  
15 privileged communications or advice ("TI's interpretation of any agreements between TI and  
16 HDMI LA") and/or work product ("[t]he resolution of any disputes between TI and HDMI LA").  
17 [Dkt. 2-1 at 2]. Availink argued at the hearing that the intention is to seek testimony on factual  
18 matters which are not privileged, and described examples of such topics (without violating the  
19 Protective Order) generally directed to TI's course of conduct under the agreements, verbal  
20 contentions communicated by TI to HDMI LA concerning the interpretation of the Adopter  
21 Agreement, and certain business terms and one specific product identified in the settlement  
22 agreement between TI and HDMI LA.

23 To address and resolve the dispute over relevance and overbreadth, the Court **ORDERS**  
24 Availink to serve on counsel for TI a letter which describes with particularity the factual, non-  
25 privileged topics and questions for which Availink seeks Rule 30(b)(6) testimony from TI. That  
26 letter shall be served on or before **June 11, 2025**. This listing of specific topics shall be  
27 reasonably correlated to the more broadly phrased topics in the deposition notice, and shall not be  
28 used as a basis to broaden the topics in the deposition notice. TI shall reasonably prepare TI's

1 designated witness to testify on the listed topics, consistent with TI's duties under Rule 30(b)(6).

2 To further address TI's concerns about overbreadth and burden in preparing a witness, the  
3 Court **ORDERS** that no later than five business days prior to the Rule 30(b)(6) deposition,  
4 Availink **SHALL** serve on counsel for TI a copy of every document which Availink in good faith  
5 expects to ask about or use as an exhibit at the upcoming deposition, correlating the documents to  
6 the listed topics in the letter ordered above. TI **SHALL** prepare their Rule 30(b)(6) designee(s) to  
7 testify about any such timely served documents as correlated to the topics listed in the letter. At  
8 such deposition session, Availink **SHALL NOT** ask questions about any other specific documents  
9 which were not served timely prior to the deposition session.

10 However, if any other counsel opens the door and questions TI's Rule 30(b)(6) designee  
11 concerning any document (whether marked as an exhibit or not) which is not included in the  
12 documents served pre-deposition by Availink, then Availink shall be entitled to question the  
13 witness on re-cross about any such documents used as an exhibit or raised by that other counsel.  
14 The time which Availink may spend on re-cross shall not count towards the time limits discussed  
15 below and shall be equal to one-half of the time spent by counsel for any other party questioning  
16 the witness on redirect. Nothing in this ruling prohibits the Parties from reaching agreement on  
17 allowing any Party to question TI's designated witness concerning any other document not served  
18 timely pre-deposition.

19 As to the concerns about privileged matters, the Court incorporates especially its directives  
20 at the June 3, 2025 hearing regarding not wasting time at the deposition attempting to elicit  
21 testimony on clearly privileged matters or challenging and probing the privilege objections. At  
22 the hearing, Availink stated that the deposition is required for Availink to preserve testimony for  
23 trial as to factual matters specifically within the knowledge of TI (and as to those matters,  
24 Availink represented that HDMI LA witnesses expressed lack of detailed knowledge at their  
25 depositions). Availink also indicated that the deposition would be needed to authenticate TI  
26 business records and lay the groundwork for addressing other admissibility objections. In the  
27 negotiations prior to the filing of the instant motion, counsel for TI offered to provide a stipulation  
28 or affidavit to address such evidentiary issues. Nothing in this Order precludes the Parties



(including HDMI LA) from reaching such agreement (or from reaching agreement as to authenticity and admissibility of any documents generally), in order to minimize the time needed for deposition. It is not uncommon for parties to reach agreements as to admissibility of documents, as part of their duties to efficiently litigate cases and streamline trial presentation.

At the hearing, counsel for Availink represented that they could complete the deposition within three hours. In light of Availink's description of the specific factual matters which are the actual topics for the deposition and in light of counsel's representation, the Court **ORDERS** that the Rule 30(b)(6) deposition of TI shall last no longer than three hours on the record in total. The Court reminds counsel for TI and HDMI LA of their obligations under Rule 30 not to make speaking objections. As discussed above, if counsel for any other party (including TI) asks questions of the TI witness, Availink shall have time for re-cross questioning of the witness equal to one-half the total time spent on the record by such other counsel and this re-cross time shall not count against the three hour time limit set above. In the exercise of its discretion to manage the timing and scope of discovery, the Court sets this time limit to address TI's concerns about overbreadth and burden. The Court emphasizes its admonition to Availink to be efficient at the deposition (particularly in light of this time limit) and to focus on the factual and non-privileged matters Availink represented it will focus on.

Further, the Court **ORDERS** TI and Availink to meet and confer to finalize the schedule for this deposition, and to complete those conferrals by **June 16, 2025**. The deposition may be taken either by Zoom (or other remote/virtual deposition vendor service) or in person, at the option of TI which TI shall communicate as part of the meet and confer to set the schedule. The deposition **SHALL** be taken no later than **July 17, 2025**, absent further order of this Court.

As discussed at the hearing on this dispute, the Court is cognizant that fact discovery has closed in the underlying case and expert discovery is about to close. The Court is granting this limited deposition as cleanup discovery, based on Availink's representations regarding the scope and timing of discovery from HDMI LA. As the presiding District Judge has made clear, the case schedule will not change. This limited deposition shall not be used as the basis for any argument by either Party to request even more discovery, and this is not an opportunity for any Party to



1 argue for a change to the case schedule. Nothing in this Order makes any findings on or is  
2 intended to address any questions as to admissibility of any evidence in any later proceedings in  
3 this matter, or to address the substance of any of the Parties' contentions as to the ultimate merits  
4 of the underlying case.

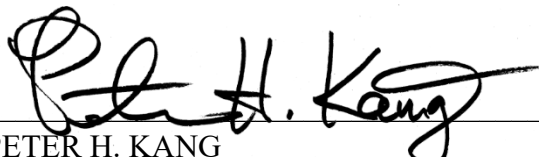
5 **CONCLUSION**

6 As discussed above, under the applicable legal standards, the Court has broad discretion to  
7 manage discovery, including scheduling and timing issues. In the full exercise of the Court's  
8 discretion, the Court accordingly **ORDERS** as follows:

- 9 1) Availink's motion to compel the production of documents in response to the subpoena  
10 is **DENIED AS MOOT** and accordingly the documents subpoena issued to Texas  
11 Instruments is **QUASHED** as discussed herein.  
12 2) Availink's motion to compel a Rule 30(b)(6) deposition of Texas Instruments is  
13 **GRANTED-IN-PART** as discussed herein.

14  
15 **IT IS SO ORDERED.**

16 Dated: June 5, 2025

17   
18 PETER H. KANG  
United States Magistrate Judge